

The Honorable Thomas S. Zilly
United States District Judge

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

| | | |
|---|---|-----------------------------|
| TYRONE WILLIAMS, |) | |
| |) | |
| Plaintiff, |) | No. C17-1085-TSZ |
| |) | |
| vs. |) | |
| |) | |
| KING COUNTY, a political subdivision of the |) | STIPULATED PROTECTIVE ORDER |
| State of Washington; CITY OF SEATAC, a |) | REGARDING CONFIDENTIALITY |
| municipal corporation; SEATAC POLICE |) | |
| DEPARTMENT; KING COUNTY SHERIFF'S |) | |
| DEPARTMENT; BRIAN BELONGIA and Jane |) | |
| Doe and the marital community composed thereof, |) | |
| |) | |
| Defendants. |) | |
| |) | |

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential or private information for which special protection may be warranted, including information that is exempt from public disclosure and non-public records as they relate to the King County Sherriff's Department, SeaTac Police Department, and Brian Belongia. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with CR 26(c). It does not confer blanket protection on all disclosures or

1 responses to discovery, the protection it affords from public disclosure and use extends only to the
2 limited information or items that are entitled to confidential treatment under the applicable legal
3 principles, and it does not presumptively entitle parties to file confidential information under seal.

4 **2. “CONFIDENTIAL MATERIAL”**

5 “Confidential” material will include the following documents, electronically stored
6 information (ESI) and tangible things produced or otherwise exchanged:

- 7 a. King County’s personnel and employee home addresses, dates of birth, social
8 security numbers; and names of dependents;
- 9 b. King County personnel and employee employment applications, tests, payroll
10 records and performance evaluations, except if there are specific instances of
11 misconduct or discipline; and medical files;
- 12 c. Any other material enjoying special legal protection from disclosure that is relevant
13 to this case.

14 **3. SCOPE**

15 The protections conferred by this agreement cover not only confidential material (as defined
16 above), but also (1) any information copied or extracted from confidential material; (2) all copies,
17 excerpts, summaries, or compilations of confidential material; and (3) any testimony, conversations,
18 or presentations by parties or their counsel that might reveal confidential material. However, the
19 protections conferred by this agreement do not cover information that is in the public domain or
20 becomes part of the public domain through trial or otherwise. In addition, these protections do not
21 apply to information that is already in the public record, such as in a publicly accessible court file or
22 trial transcript.

1 **4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL**

2 4.1 Basic Principles

3 A receiving party may use confidential material that is disclosed or produced by another
4 party or by a non-party in connection with this case only for prosecuting, defending, or
5 attempting to settle this litigation. Confidential material may be disclosed only to the categories
6 of persons and under the conditions described in this agreement. Confidential material must be
7 stored and maintained by a receiving party at a location and in a secure manner that ensures that
8 access is limited to the persons authorized under this agreement.

9 4.2 Disclosure of “CONFIDENTIAL” Information or Items.

10 Unless otherwise ordered by the court or permitted in writing by the designating party, a
11 receiving party may disclose any confidential material only to:

12 (a) the receiving party’s counsel of record in this action, as well as employees of
13 counsel to whom it is reasonably necessary to disclose the information for this litigation;

14 (b) the officers, directors, and employees (including in house counsel) of the
15 receiving party to whom disclosure is reasonably necessary for this litigation, unless the parties
16 agree that a particular document or material produced is for Attorney’s Eyes Only and is so
17 designated;

18 (c) experts and consultants to whom disclosure is reasonably necessary for this
19 litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

20 (d) the court, court personnel, and court reporters and their staff;

21 (e) copy or imaging services retained by counsel to assist in the duplication of
22 confidential material, provided that counsel for the party retaining the copy or imaging service
23

1 instructs the service not to disclose any confidential material to third parties and to immediately
2 return all originals and copies of any confidential material;

3 (f) during their depositions, witnesses in the action to whom disclosure is reasonably
4 necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A),
5 unless otherwise agreed by the designating party or ordered by the court. Pages of transcribed
6 deposition testimony or exhibits to depositions that reveal confidential material must be separately
7 bound by the court reporter and may not be disclosed to anyone except as permitted under this
8 agreement;

9 (g) the author or recipient of a document containing the information or a custodian
10 or other person who otherwise possessed or knew the information.

11 4.3 Filing Confidential Material

12 Before filing confidential material or discussing or referencing such material in court
13 filings, the filing party shall confer with the designating party to determine whether the
14 designating party will remove the confidential designation, whether the document can be
15 redacted, or whether a motion to seal or stipulation and proposed order is warranted. Local Civil
16 Rule 5(g) sets forth the procedures that must be followed and the standards that will be applied
17 when a party seeks permission from the court to file material under seal.

18 5. **DESIGNATING PROTECTED MATERIAL**

19 5.1 Exercise of Restraint and Care in Designating Material for Protection.

20 Each party or non-party that designates information or items for protection under this
21 agreement must take care to limit any such designation to specific material that qualifies under
22 the appropriate standards. The designating party must designate for protection only those parts of
23 material, documents, items, or oral or written communications that qualify, so that other portions

1 of the material, documents, items, or communications for which protection is not warranted are
2 not swept unjustifiably within the ambit of this agreement.

3 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
4 shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to
5 unnecessarily encumber or delay the case development process or to impose unnecessary
6 expenses and burdens on other parties) expose the designating party to sanctions. If it comes to a
7 designating party's attention that information or items that it designated for protection do not
8 qualify for protection, the designating party must promptly notify all other parties that it is
9 withdrawing the mistaken designation.

10 5.2 Manner and Timing of Designations

11 Except as otherwise provided in this agreement (see, *e.g.*, second paragraph of section
12 5.2(a) below), or as otherwise stipulated or ordered, disclosure of discovery material that
13 qualifies for protection under this agreement must be clearly so designated before or when the
14 material is disclosed or produced.

15 (a) Information in documentary form: (*e.g.*, paper or electronic documents and
16 deposition exhibits, but excluding transcripts of depositions or other pretrial or trial
17 proceedings), the designating party must affix the word "CONFIDENTIAL" to each page that
18 contains confidential material. If only a portion or portions of the material on a page qualifies for
19 protection, the producing party also must clearly identify the protected portion(s) (*e.g.*, by
20 making appropriate markings in the margins).

21 (b) Testimony given in deposition or in other pretrial or trial proceedings: the
22 parties must identify on the record, during the deposition, hearing, or other proceeding, all
23 protected testimony, without prejudice to their right to so designate other testimony after

1 reviewing the transcript. Any party or non-party may, within fifteen days after receiving a
2 deposition transcript, designate portions of the transcript, or exhibits thereto, as confidential.

3 (c) Other tangible items: the producing party must affix in a prominent place on
4 the exterior of the container or containers in which the information or item is stored the word
5 "CONFIDENTIAL." If only a portion or portions of the information or item warrant protection,
6 the producing party, to the extent practicable, shall identify the protected portion(s).

7 5.3 Inadvertent Failures to Designate

8 If timely corrected, an inadvertent failure to designate qualified information or items does
9 not, standing alone, waive the designating party's right to secure protection under this agreement
10 for such material. Upon timely correction of a designation, the receiving party must make
11 reasonable efforts to ensure that the material is treated in accordance with the provisions of this
12 agreement.

13 **CHALLENGING CONFIDENTIALITY DESIGNATIONS**

14 6.1 Timing of Challenges

15 Any party or non-party may challenge a designation of confidentiality at any time. Unless
16 a prompt challenge to a designating party's confidentiality designation is necessary to avoid
17 foreseeable, substantial unfairness, unnecessary economic burdens, or a significant disruption or
18 delay of the litigation, a party does not waive its right to challenge a confidentiality designation
19 by electing not to mount a challenge promptly after the original designation is disclosed.

20 6.2 Meet and Confer

21 The parties must make every attempt to resolve any dispute regarding confidential
22 designations without court involvement. Any motion regarding confidential designations or for a
23 protective order must include a certification, in the motion or in a declaration or affidavit, that

1 the movant has engaged in a good faith meet and confer conference with other affected parties in
2 an effort to resolve the dispute without court action. The certification must list the date, manner,
3 and participants to the conference. A good faith effort to confer requires a face-to-face meeting
4 or a telephone conference.

5 6.3 Judicial Intervention

6 If the parties cannot resolve a challenge without court intervention, the designating party
7 may file and serve a motion to retain confidentiality under Local Civil Rule 7 (and in compliance
8 with Local Civil Rule 5(g), if applicable). The burden of persuasion in any such motion shall be
9 on the designating party. Frivolous challenges and those made for an improper purpose (*e.g.*, to
10 harass or impose unnecessary expenses and burdens on other parties) may expose the
11 challenging party to sanctions. All parties shall continue to maintain the material in question as
12 confidential until the court rules on the challenge.

13 **7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN** 14 **OTHER LITIGATION OR SUBJECT TO A PUBLIC DISCLOSURE REQUEST**

15 If a party is served with a subpoena or a court order issued in other litigation that compels
16 disclosure of any information or items designated in this action as “CONFIDENTIAL,” that
17 party must:

18 (a) promptly notify the designating party in writing and include a copy of the subpoena or
19 court order;

20 (b) promptly notify in writing the party who caused the subpoena or order to issue in the
21 other litigation that some or all of the material covered by the subpoena or order is subject to this
22 agreement. Such notification shall include a copy of this agreement; and

23 (c) cooperate with respect to all reasonable procedures sought to be pursued by the
designating party whose confidential material may be affected.

1 **8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

2 If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential
3 material to any person or in any circumstance not authorized under this agreement, the receiving
4 party must immediately (a) notify in writing the designating party of the unauthorized
5 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the protected material,
6 (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of
7 this agreement, and (d) request that such person or persons execute the “Acknowledgment and
8 Agreement to Be Bound” that is attached hereto as Exhibit A.

9 **9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
10 **PROTECTED MATERIAL**

11 When a producing party gives notice to receiving parties that certain inadvertently
12 produced material is subject to a claim of privilege or other protection, the obligations of the
13 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(6). This provision is
14 not intended to modify whatever procedure may be established in an e-discovery order or
15 agreement that provides for production without prior privilege review. Parties shall confer on an
16 appropriate non-waiver order under Fed. R. Evid. 502.

17 **10. NON TERMINATION AND RETURN OF DOCUMENTS**

18 Within **60 days** after the termination of this action, including all appeals, each receiving
19 party must return all confidential material to the producing party, including all copies, extracts
20 and summaries thereof. Alternatively, the parties may agree upon appropriate methods of
21 destruction. Notwithstanding this provision, counsel are entitled to retain one archival copy of all
22 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,
23 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert
work product, even if such materials contain confidential material.

1 The confidentiality obligations imposed by this agreement shall remain in effect until a
2 designating party agrees otherwise in writing or a court orders otherwise.

3 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

4
5 DATED this ____ day of April, 2018.

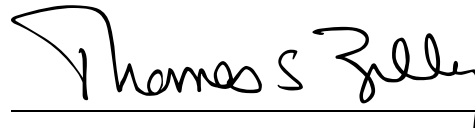
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7 _____
MATTHEW D. HARTMAN, WSBA #33054
Attorney for Plaintiff Tyrone Williams

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9 _____
DANIEL L. KINERK, WSBA #13537
Attorney for Defendants King County, SeaTac Police,
10 City of SeaTac, King County Sheriff's Department, and
11 Brain Belongia

12
13 **ORDER**

14 The Court having reviewed the foregoing stipulation of the parties, and being duly
15 advised, hereby orders pursuant to CR 26(c) that the parties' disclosure and exchange of
16 Confidential Information, as defined herein, shall be governed by the terms of this Order, and
17 this Order is hereby approved and entered by the Court.

18 Dated this 18th day of April, 2018.

19
20 

21 Thomas S. Zilly
22 United States District Judge
23

1 Presented by:

2
3 By: s/Daniel L. Kinerk
4 DANIEL L. KINERK, WSBA #13537
5 Senior Deputy Prosecuting Attorney
6 Attorney for Defendant King County

7
8 Approved as to Form and For Entry;

9
10 By: _____
11 MATTHEW D. HARTMAN, WSBA #33054
12 Attorney for Plaintiff Tyrone Williams

13 EXHIBIT A

14 AGREEMENT TO BE BOUND BY PROTECTIVE ORDER

15 I, the undersigned, hereby acknowledge that I have received and read a copy of the
16 Stipulated Protective Order ("Order") entered in *Tyrone Williams v. King County et al*, United
17 States District Court; Cause No.2:17-cv-1085, that I understand the provisions in the Order; that
18 I agree to be bound by all provisions of the Order; that I submit to the jurisdiction of the Court
19 for the purpose of enforcing the Order; and that I understand that sanctions may be imposed by
20 the Court, including an order of contempt, if I fail to abide by and comply with all the terms,
21 conditions and restrictions imposed by the Order.
22
23

Date

Signature

Name Printed